



Best Available Copy

Handwritten initials: RD AF

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Robert T. Cole et al.
Title: Absorbent product line and device for identifying absorbent products

Docket No.: 28118
Filed: September 24, 2003
Examiner: Jacqueline F. Stephens

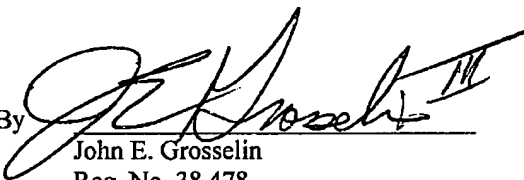
Serial No.: 10/668,297
Due Date: April 1, 2007
Group Art Unit: 3761

Mail Stop Appeal Brief
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

We are transmitting herewith the following attached items (as indicated with an "X"):

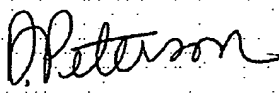
- ☒ A return postcard and this transmittal document.
- ☒ An Appeal Brief (23 Pgs.).
- ☒ Petition For A One-Month Extension Of Time (1 pg.).
- ☒ Authorization to charge the Deposit Account No. 50-3790 an amount of \$500.00 to cover the Large Entity Appeal Brief payment and \$120.00 to cover the Petition For A One-Month Extension Of Time payment.

Robert T. Cole et al.
Tyco Healthcare Retail Services Ag
c/o Bahnhofstrasse 29
Schaffhausen, Switzerland 8200

By 
John E. Grosselin
Reg. No. 38,478

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 16 day of March, 2007.

Deborah J. Peterson
Name


Signature

(GENERAL)



Attorney Docket No.: 28118

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:
Robert T. Cole et al.
Serial No.: 10/668,297
Filed: September 24, 2003

Title: ABSORBENT PRODUCTS LINE AND DEVICE FOR IDENTIFYING
ABSORBENT PRODUCTS

Group Art Unit: 3761
Examiner: Stevens, Jacqueline F.

Brief on Appeal

Mail Stop Appeal Brief
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This Appeal Brief is filed in response to the communication mailed by the Patent Office on February 1, 2007, entitled "Notice of Panel Decision from Pre-Appeal Brief Review," in which the Panel decided that the present application remains under appeal because there is at least one actual issue for appeal.

Real Party in Interest.

The real party in interest is Tyco Healthcare Retail Services, AG, Bahnhofstrasse 29, Schaffhausen, Switzerland 8200, by virtue of assignment recorded August 29, 2006, (Reel/Frame: 018192/0607).

Related Appeals and Interferences.

There are no other pending appeals, interferences or judicial proceedings which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision.

Status of Claims.

Claims 1-2, 5-6, 8-16, 18-22, 25, 27-31, 34-35 and 37-45 are the subject of this appeal.

Claims 3-4, 7, 17, 23-24, 26, 32-33, and 36 are withdrawn from consideration.
No other claims are pending.

03/20/2007 HGUTEMA1 00000114 503790 10668297

01 FC:1402 500.00 DA

Status of Amendments.

No amendment has been filed subsequent to the final rejection.

Summary of the Claimed Subject Matter.

Claims 1, 14, 22, 30, 40, 42, 43, and 45 are independent claims. The pending claims are directed to the following embodiments:

- 1-2, 5-6 & 8-13: visual identification device for absorbent products
- 14-16 & 18-21: graphical representation for absorbent products
- 22, 25 & 27-29: method of packaging absorbent products
- 30-31, 34-35 & 37-38: package for containing absorbent products
- 39-45: an absorbent product line.

FIG. 1 illustrates exemplary embodiments of the first four sets of independent claims, including a visual identification device 10 for absorbent products, wherein the same device 10 also displays a graphical representation for absorbent products; is illustrative of a method for marking a package of absorbent articles, and is further representative of a package for containing absorbent articles. FIG. 2 is illustrative of embodiments of the last set of independent claims, i.e., an absorbent product line.

Independent claim 1 exemplifies an embodiment of a “visual identification device for absorbent products.” Referring to paragraph [0029], FIG. 1 is described as depicting “an embodiment of a device 10 of the present invention, where the device is a graphical representation having a first axis 11 extending vertically, and a second axis 12 extending horizontally.” As further described, the first axis 11 generally corresponds to size designations 13, while the second axis 12 generally corresponds to absorbency designations 14. Additionally, the device 10 comprises a plurality of absorbent product designations 15, with each absorbent product designation 15 being associated with a combination of one size designation and one absorbency designation.

Claim 1 recites a “visual identification device for absorbent products.” As described in connection with paragraph [0029], the visual identification device comprises two or more size designations (13), two or more absorbency designations (14), and two or more absorbent product designations (15). Claim 1 also requires an “association” between each of the two or more absorbent product designations (15) and a combination of one of the size designations 13 and one of the absorbency designations (14); and that this association identifies one or more absorbent product designations (15) that are predicted to satisfy a user's fit and absorbency requirements.

Another important limitation in claim 1 requires that this “association” also identify at least two absorbent product designations (15) that correspond to a single size designation (13), i.e., “wherein the association identifies at least two absorbent product designations that correspond to one of the two or more size designations.”

This last limitation in claim 1 is further supported by the description, e.g., in paragraph [0035], which provides that “the association between the product designations 15, size designations and absorbency designations 14 indicates that numerous product designations 15 correspond to the same size designations. For example, the “Light Long” and “Heavy” product designations 15 both correspond to the same size designations, as measured by the scaling index 13. That is to say, these two product designations 15 are approximately the same size.”

The reason for this is also clearly explained at the end of paragraph [0035], which states that “By clearly indicating the size and absorbency characteristics for a range of similar products, this embodiment of the invention overcomes the conventional obstacle of helping users identify products that meet both their absorbency requirements and their fit requirements. As such, the users understand that they do not have to sacrifice a comfortable fit to obtain the desired absorbency level (or vice-versa).”

Independent claim 14 exemplifies an embodiment of a graphical representation for absorbent products. Referring again to paragraph [0029], FIG. 1 is described as depicting “an embodiment of a device 10 of the present invention, where the device is a graphical representation having a first axis 11 extending vertically, and a second axis 12 extending horizontally.” As further described, “The first axis 11 generally corresponds to size designations 13, while the second axis 12 generally corresponds to absorbency designations 14.” Additionally, “The device 10 comprises a plurality of absorbent product designations 15, with each absorbent product designation 15 being associated with a combination of one size designation and one absorbency designation.”

As further described in paragraph [0031], “the absorbent product designation 15 comprises two systems of identification: a graphical representation of the shape of the product 15a; and a textual description comprising the name of the product 15b. Each of the absorbent product designations is associated with one size designation 13 and with one absorbency designation 14, which identify the size and absorbency of the identified absorbent product, respectively.

Claim 14 recites “a graphical representation for absorbent products.” As described in connection with paragraph [0029], the graphical representation comprises a chart having a size axis (11) and an absorbency axis (12), the size axis (11) corresponding to size designations (13), and the absorbency axis (12) corresponding to absorbency designations (14). Claim 14 further requires two or more absorbent product designations (15) located on the chart, an “association” between each of the two or more absorbent product designations (15) and a combination of one of the size designations (13) and one of the absorbency designations (14); and that this “association” identify one or more absorbent product designations (15) that are predicted to satisfy a user's fit and absorbency requirements.

Like claim 1, another important limitation in claim 14 requires that this “association” also identify at least two absorbent product designations (15) that correspond to a single size

designation (13), i.e., "wherein the association identifies at least two absorbent product designations that correspond to one of the two or more size designations."

As with claim 1, the support and reasons for this last limitation in claim 14 find support in paragraph [0035], and particularly in, for example, the portions quoted above.

Independent claim 22 exemplifies an embodiment of a method for marking an absorbent article package. Referring to paragraph [0040], "The device 10 of the present invention, as shown in FIG. 1, is particularly suited as a method for marking a package of absorbent articles." According to the method of claim 22, "a package comprising the device 10 would contain "Maximum Long" absorbent products, as indicated by the product designation 15 in combination with the content indicator 16. The product designation 15 is associated with a size designation 13, and an absorbency designation 14, which characterize the absorbent product as having a "Maximum" absorbency level, and a size (length) of approximately 14 inches." Further details of the device 10 are as described in, for example, paragraph [0029].

Claim 22 recites "a method for marking an absorbent article package." As described in connection with paragraphs [0029] and [0040], the method for marking an absorbent article package comprises marking two or more absorbent product designations (15), marking two or more absorbency designations (14), wherein each absorbent product designation (15) is associated with one or more absorbency designations (14), and marking two or more size designations (13), wherein each absorbent product designation (15) is associated with one or more size designations (13).

Similarly, but not identically to claims 1 and 14, another important limitation in claim 22 requires that a single size designation is associated with different absorbent product designations having different absorbency designations, i.e., "at least one size designation is associated with two or more absorbent product designations associated with different absorbency designations." Essentially, this requires that absorbent products with different absorbency designations correspond to a single size designation.

As with claims 1 and 14, the support and reasons for this last limitation in claim 22 can be found in paragraph [0035], and particularly in, for example, the portions quoted previously.

Independent claim 30 exemplifies an embodiment of a package for containing absorbent products. Referring to paragraph [0040], "a package comprising the device 10 would contain "Maximum Long" absorbent products, as indicated by the product designation 15 in combination with the content indicator 16. The product designation 15 is associated with a size designation 13, and an absorbency designation 14, which characterize the absorbent product as having a "Maximum" absorbency level, and a size (length) of approximately 14 inches." Further details of the device 10 are as described in, for example, paragraph [0029].

Claim 30 recites "package for containing absorbent products." As described in connection with paragraphs [0029] and [0040], the package for containing absorbent

products comprises two or more size designations (13) two or more absorbency designations (14), two or more absorbent product designations (15), an "association" between each of the two or more absorbent product designations (15) and a combination of one of the size designations (13) and one of the absorbency designations (14), and wherein this association identifies one or more absorbent product designations (15) that are predicted to satisfy a user's fit and absorbency requirements.

Like claims 1 and 14, and similarly to claim 22, another important limitation in claim 30 requires that this "association" also identify at least two absorbent product designations (15) that correspond to a single size designation (13), i.e., "wherein the association identifies at least two absorbent product designations that correspond to one of the two or more size designations."

As with claims 1, 14 and 22, the support and reasons for this last limitation in claim 30 can be found in paragraph [0035], and particularly in, for example, the portions quoted previously.

Independent claims 40, 42, 43, and 45 each exemplify embodiments of an absorbent product line. Referring paragraph [0027], it is provided therein that FIG. 2 illustrates an embodiment of a product line 100 which includes a plurality of absorbent products that share a common construction, each absorbent product being characterized by a combination of size and absorbency. Products sharing the same combination of size and absorbency are contained within a package A1-A8. The term "package" can refer to a sealed package used to distribute the final absorbent product, may include a unitary package housing absorbent products being distributed/sold to the user, and also may include individual packages which are connected together.

Paragraph [0028] explains that, while the characteristics of the absorbent products contained within the package A1-A8 are the same, each package A1-A8 contains products that have a different combination of size and absorbency, relative to the other packages A1-A8. In one embodiment, the product line 100 contains two or more packages A1-A8 that share the same size characteristic, while having different absorbency characteristics. For example, in the product line 100 shown in FIG. 2, packages A2 and A5 have the same size, but package A5 has a higher absorbency than package A2. Similarly, packages A4 and A7 have the same size, but package A7 has a higher absorbency than package A5. It also may be possible for more than two packages A1-A8 within a product line 100 to have the same size, and different absorbencies.

Paragraph [0028] further describes another embodiment in which the product line 100 contains two or more packages A1-A8 that share the same absorbency characteristic, while having different size characteristics. For example, in the product line shown in FIG. 2, packages A3 and A4 have the same absorbency, but package A4 has a larger size than package A3. Similarly, packages A5 and A6 have the same absorbency, but package A6 has a larger size than package A5. It also may be possible for more than two packages A1-A8 within a product line 100 to have the same size, and different absorbencies. Of course, a product line 100 of the present invention may contain two or

more packages A1-A8 having the same size and different absorbencies; as well as two or more packages A1-A8 having the same absorbency and different sizes.

Independent claims 40 and 42 each recite an absorbent product line comprising two or more absorbent products in which each of the two or more absorbent products are characterized by a combination of an absorbency designation and a size designation, and in which each of the two or more absorbent products are characterized by a different combination of absorbency designation and size designation.

Claims 40 and 42 differ only with respect to the last limitation. In particular, claim 40, recites “at least two of the two or more absorbent products are characterized by the same absorbency designation and different size designations,” whereas claim 42 recites “at least two of the two or more absorbent products are characterized by the same size designation and different absorbency designations.”

Thus, the only difference is that claim 40 requires products having different sizes with the same absorbency, whereas claim 42 is the opposite, i.e., the same size with different absorbencies. In this regard, claim 40 can be seen to corresponds to the first embodiment of the product line 100 described in paragraph [0028], whereas claim 42 corresponds to the second embodiment described in that paragraph.

Independent claims 43 and 45 each recite an absorbent product line comprising a plurality of packages, a plurality of products having a similar construction, in which each has a size designation and an absorbency designation, each of the packages contains products having the same size designation and the same absorbency designation, and wherein each package has the same size designation and absorbency designation as the products it contains.

Claims 43 and 45 differ only with respect to the last limitation. In particular, claim 40, recites “at least two of the packages in the product line have the same size designation and different absorbency designations,” whereas claim 45 recites “at least two of the packages in the product line have the same absorbency designation and different size designations.”

Thus, similarly to claims 40 and 42 (but reversed), the only difference is that claim 43 requires products having the same size with different absorbencies, whereas claim 45 is the opposite, i.e., the same absorbency with different sizes. In this regard, claim 45 can be seen to corresponds to the first embodiment of the product line 100 described in paragraph [0028], whereas claim 43 corresponds to the second embodiment described in that paragraph.

Grounds of Rejection to be Reviewed on Appeal.

Claims 1-2, 5-6, 8-16, 18-22, 25, 27-31, 34-35 and 37-45 stand rejected under 35 U.S.C. § 103(a) as obvious over Ronn et al. (U.S. patent No. 6,648,864).

Argument.

Each of the independent claims require “absorbency designations” and “size designations.” Additionally, although recited differently in some claims, each independent claim also requires a relationship between the size and absorbency designations wherein either (1) two size designations correspond to one absorbency designation; or (2) two absorbency designations correspond to one size designation.

1. The Prior Art.

Ronn et al. is the only prior art relied upon by the Examiner in rejecting all of the pending claims under §103(a). Ronn is characterized by the Examiner as follows:

Ronn does not specifically provide absorbency designations. However, the examiner disagrees that one can not correlate size and product designations and absorbency.¹

Regarding claims 1, 2, 5, 22, 25, 29-31, 34, and 37-45 discloses a visual identification device for absorbent articles comprising: two or more size designations and two or more product designations (Figure 4a). **Ronn does not specifically disclose two or more absorbency designations. However, because the display designates different sizes and different stages of development, it would have been obvious to one of ordinary skill in the art at the time the invention was made to inform the consumer about different absorbencies,** since the general concept is to provide a fit appropriate for the child’s state of development **and it is considered obvious that different sizes and particularly different stages of development, such as a training pant, has different levels of absorbency.** For example, Glaug USPN 5649914 teaches a toilet training aid with a low absorbent capacity.²

Ronn et al. disclose an array of disposable absorbent article configurations comprising a sequence of designs corresponding to the particular stage of development of the wearer. The reference further describes a merchandising system which provides for the selection of an absorbent article based on a particular stage of development of the wearer. The system includes indicia exhibiting pictorial representations of the absorbent article configurations fitted to the wearer at corresponding stages of development, enabling a consumer to choose the appropriate absorbent article configuration for a particular wearer.

The merchandising system described by Ronn et al. provides information to a consumer about disposable absorbent articles which are specially configured for children at different stages of development. As described in Ronn et al. “a preferred embodiment includes an assortment of disposable diapers made available in a variety product configurations where each configuration includes distinguishable characteristics

¹ Paragraph 1 of the Office Action (Final Rejection) dated August 14, 2006, emphasis added.

² Id. at Paragraph 4, emphasis added.

comprising structural differences addressing a wearer's stage of development." (Col. 4, lns. 17-22.) For the most part, **the different configurations address differences in the child's level of activity and capability**, as described in the remainder of column 4, and over into column 5.

The Ronn et al. merchandising system does disclose that the same size article can be identified with articles configured for two different stages of development. However, as acknowledged by the Examiner, absorbency designations are not mentioned, nor is correlating one absorbency designation to a single size designation (or vice-versa). Also, as will be explained below, the different stages of development have no necessary relationship to the absorbency of the articles. Rather, the different configurations for the various stages of development, as quoted above, comprise structural differences addressing a wearer's stage of development. (Col. 4, lns. 17-22.)

U.S. Patent No. 5,649,914 to Glaug is referred to in the quote above, but is not relied upon in the rejection of the claims. Nevertheless, Glaug does not support the Examiner's argument. Glaug does not mention absorbency or size designations, and does not mention correlating different size designations with a single absorbency designations (or vice-versa).

Appellant notes that Ronn et al. makes a passing reference to feminine hygiene products (col. 4, lns. 15-17). However, there is not even a hint of any connection to different levels of absorbency for such articles. Instead, Ronn et al. explain that "feminine hygiene garments may be made available in a variety of designs depending on a wearer's level of activity. The latter part of the statement is entirely consistent with the whole disclosure of Ronn et al., as explained above, in that the reference never contemplates any correlation of absorbency with either size or stage of development.

It is well known that feminine hygiene products can be made with different structural features which relate to the "activity level" of the user, and such features are not necessarily related to the absorbency of the article. Therefore, the reference to feminine hygiene products does not suggest any relationship to different levels of absorbency, or correlating the size of the article with different absorbency levels (or vice-versa).

In sum, nothing in the prior art mentions absorbency designations, or correlating absorbency designations to different size designations, or vice versa. This teaching is found only in Appellant's disclosure.

2. The Standard of Review.

Appellant relies on the traditional legal basis for obviousness found in the MPEP and applicable legal precedent. The three criteria that must be met to establish a prima facie case of obviousness are: (1) there must be some suggestion or motivation to modify the reference or to combine reference teachings, (2) there must be a reasonable expectation of success, and (3) the prior art reference must teach or suggest all the claim limitations.³

³ See MPEP § 2143.

As will be explained in more detail below, Appellant respectfully submits none of these three criteria for obviousness are satisfied by Ronn et al. with respect to the rejected claims.

3. The Claims.

Independent Claim 1.

1. (original) A visual identification device for absorbent products, the device comprising:

two or more size designations;

two or more absorbency designations;

two or more absorbent product designations;

an association between each of the two or more absorbent product designations and a combination of one of the size designations and one of the absorbency designations, wherein the association identifies one or more absorbent product designations that are predicted to satisfy a user's fit and absorbency requirements; and

wherein the association identifies at least two absorbent product designations that correspond to one of the two or more size designations.

It is Appellant's position that Ronn et al. fail to teach or suggest "absorbency designations" or "at least two absorbent product designations that correspond to one of the two or more size designations," in which there is "an association between each of the two or more absorbent product designations and a combination of one of the size designations and one of the absorbency designations."

According to the traditional legal basis for obviousness, there must be some teaching or motivation to both provide absorbency designations and to then correlate the size designation with the absorbency designations. The Examiner concedes that Ronn et al. is silent in this regard. Additionally, even though not relied upon, Glaug does not provide the requisite teaching or motivation to modify Ronn et al. in the manner suggested by the Examiner.

Referring to the characterization of Ronn et al. quoted above, the statements by the Examiner demonstrate that this rejection is ultimately based upon the erroneous assumption that "different sizes and particularly different stages of development [have] different levels of absorbency." This assumption is incorrect on both points-- neither size nor stage of development are necessarily linked to different levels of absorbency.

Size and absorbency characteristics are two different elements or features of the absorbent article. These two features are not directly proportional to each other in every instance as implied by the Examiner. For example, some users may require a small size absorbent article but at the same time have higher absorbency needs, such as for feminine hygiene products used during menstrual periods which are relatively small in size but require a higher degree of absorbency. This is precisely why absorbency cannot always be directly linked to size.

Stage of development and absorbency are also two different elements or features of the absorbent article which are also not directly proportional to each other in every instance. In the context of the "stages of development" designation described in Ronn et al., diapers of different sizes might be expected to inherently have different levels of absorbency, but diapers configured for different stages of development would not necessarily be expected to require different levels of absorbency.

With perhaps the sole exception of training pants (which deliberately have less than the "required" absorbency), the same size child would normally be expected to require the same level of absorbency regardless of the stage of development of the child. Put another way, the same size child is typically expected to require the same level of absorbency without regard to stage of development (absent unusual circumstances, such as perhaps a medical condition).

Therefore, nothing in Ronn et al. teaches or suggests providing absorbency designations or correlating the same with either size or stage of development designations.

Another criteria in the obviousness analysis is a "reasonable expectation of success." This factor is also not satisfied by Ronn et al. Specifically, to modify Ronn et al. in the manner suggested by the Examiner, to include information about absorbency would seem to provide no useful result in the context of that reference. On the contrary, it would seem to add unnecessary complexity, and may even make that system confusing, because there is no necessary correlation between absorbency and the other designations. As a result, Ronn et al. more likely teaches away from correlating absorbency designations to the size or stage of development designations.

To summarize, the merchandising system described in Ronn et al. correlates different sized articles with articles configured for different stages of development, in which the different stages of development are based upon the wearer's capability or level of activity. Neither size nor different stages of development have any necessary correlation to absorbency in the context of that system, such that the addition of absorbency designations would serve no useful purpose.

Accordingly, apart from Appellant's own disclosure, there is no teaching or suggestion to modify Ronn et al. in the manner suggested by the Examiner to include absorbency designations and to correlate such absorbency designations with either the size or stage of development designations.

Therefore, and for all of the reasons explained in detail above, claim 1, and hence claims 2, 5-6 & 8-13 which depend therefrom, are patentable over Ronn et al., either alone or in combination with any other prior art of record.

Independent Claim 14.

14. (original) A graphical representation for absorbent products, the graphical representation comprising:

a chart having a size axis and an absorbency axis, the size axis corresponding to size designations, and the absorbency axis corresponding to absorbency designations;

two or more absorbent product designations located on the chart; and

an association between each of the two or more absorbent product designations and a combination of one of the size designations and one of the absorbency designations;

wherein the association identifies one or more absorbent product designations that are predicted to satisfy a user's fit and absorbency requirements; and wherein the association identifies at least two absorbent product designations that correspond to one of the two or more size designations.

It is Appellant's position that Ronn et al. fail to teach or suggest "a chart having a size axis and an absorbency axis, the size axis corresponding to size designations, and the absorbency axis corresponding to absorbency designations" or wherein "at least two absorbent product designations that correspond to one of the two or more size designations."

Put briefly, and as described in more detail previously, the merchandising system described in Ronn et al. correlates different sized articles with articles configured for different stages of development, in which the different stages of development are based upon the wearer's capability or level of activity. Neither size nor different stages of development have any necessary correlation to absorbency in the context of that system, such that the addition of absorbency designations would serve no useful purpose.

Accordingly, apart from Appellant's own disclosure, there is no teaching or suggestion modify Ronn et al. in the manner suggested by the Examiner to include absorbency designations and to correlate such absorbency designations with either the size or stage of development designations.

Therefore, and for all of the reasons explained in detail above, claim 14, and hence claims 15-16 & 18-21 which depend therefrom, are patentable over Ronn et al., either alone or in combination with any other prior art of record.

Independent Claim 22.

22. (original) A method for marking an absorbent article package, the method comprising:

marking two or more absorbent product designations;

marking two or more absorbency designations, wherein each absorbent product designation is associated with one or more absorbency designations;

marking two or more size designations, wherein each absorbent product designation is associated with one or more size designations, and at least one size designation is associated with two or more absorbent product designations associated with different absorbency designations.

It is Appellant's position that Ronn et al. fail to teach or suggest "marking two or more absorbency designations, wherein each absorbent product designation is associated with one or more absorbency designations" or "wherein ... at least one size designation is associated with two or more absorbent product designations associated with different absorbency designations."

Put briefly, and as described in more detail previously, the merchandising system described in Ronn et al. correlates different sized articles with articles configured for different stages of development, in which the different stages of development are based upon the wearer's capability or level of activity. Neither size nor different stages of development have any necessary correlation to absorbency in the context of that system, such that the addition of absorbency designations would serve no useful purpose.

Accordingly, apart from Appellant's own disclosure, there is no teaching or suggestion modify Ronn et al. in the manner suggested by the Examiner to include absorbency designations and to correlate such absorbency designations with either the size or stage of development designations.

Therefore, and for all of the reasons explained in detail above, claim 22, and hence claims 25 & 27-29 which depend therefrom, are patentable over Ronn et al., either alone or in combination with any other prior art of record.

Independent Claim 30.

30. (original) A package for containing absorbent products comprising:

two or more size designations;

two or more absorbency designations;

two or more absorbent product designations;

an association between each of the two or more absorbent product designations and a combination of one of the size designations and one of the absorbency designations, wherein the association identifies one or more absorbent product designations that are predicted to satisfy a user's fit and absorbency requirements; and

wherein the association identifies at least two absorbent product designations that correspond to one of the two or more size designations.

It is Appellant's position that Ronn et al. fail to teach or suggest "two or more absorbency designations;" "an association between each of the two or more absorbent product designations and a combination of one of the size designations and one of the absorbency designations" or "wherein the association identifies at least two absorbent product designations that correspond to one of the two or more size designations."

Put briefly, and as described in more detail previously, the merchandising system described in Ronn et al. correlates different sized articles with articles configured for different stages of development, in which the different stages of development are based upon the wearer's capability or level of activity. Neither size nor different stages of development have any necessary correlation to absorbency in the context of that system, such that the addition of absorbency designations would serve no useful purpose.

Accordingly, apart from Appellant's own disclosure, there is no teaching or suggestion modify Ronn et al. in the manner suggested by the Examiner to include absorbency designations and to correlate such absorbency designations with either the size or stage of development designations.

Therefore, and for all of the reasons explained in detail above, claim 30, and hence claims 31, 34-35 & 37-38 which depend therefrom, are patentable over Ronn et al., either alone or in combination with any other prior art of record.

Independent Claims 40 and 42.

40. (original) An absorbent product line comprising:

two or more absorbent products, whereby each of the two or more absorbent products is characterized by a combination of an absorbency designation and a size designation, and

each of the two or more absorbent products are characterized by a different combination of absorbency designation and size designation, and

at least two of the two or more absorbent products are characterized by the same absorbency designation and different size designations.

42. (previously amended) An absorbent product line comprising:

two or more absorbent products, whereby each of the two or more absorbent products is characterized by a combination of an absorbency designation and a size designation; and

each of the two or more absorbent products are characterized by a different combination of absorbency designation and size designation; and

at least two of the two or more absorbent products are characterized by the same size designation and different absorbency designations.

Claims 40 and 42 each recite an absorbent product line comprising two or more absorbent products in which each of the two or more absorbent products are characterized by “a combination of an absorbency designation and a size designation,” and wherein either (1) “at least two ... absorbent products are characterized by the same absorbency designation and different size designations” [claim 40] or (2) “at least two ... absorbent products are characterized by the same size designation and different absorbency designations” [claim 42].

It is Appellant's position that Ronn et al. fail to teach or suggest at least these limitations in claims 40 and 42.

Put briefly, and as described in more detail previously, the merchandising system described in Ronn et al. correlates different sized articles with articles configured for different stages of development, in which the different stages of development are based upon the wearer's capability or level of activity. Neither size nor different stages of development have any necessary correlation to absorbency in the context of that system, such that the addition of absorbency designations would serve no useful purpose. .

Accordingly, apart from Appellant's own disclosure, there is no teaching or suggestion modify Ronn et al. in the manner suggested by the Examiner to include absorbency designations and to correlate such absorbency designations with either the size or stage of development designations.

Therefore, and for all of the reasons explained in detail above, claims 40 and 42, and hence claim 41 which depends from claim 40, are patentable over Ronn et al., either alone or in combination with any other prior art of record.

Independent Claims 43 and 45.

43. (original) An absorbent product line comprising:

a plurality of packages; and

a plurality of products having a similar construction, each of the products having a size designation and an absorbency designation;

wherein each of the packages contains products having the same size designation and the same absorbency designation; and

wherein each of the packages has the same size designation and absorbency designation as the products it contains; and

wherein at least two of the packages in the product line have the same size designation and different absorbency designations.

45. (original) An absorbent product line comprising:

a plurality of packages; and

a plurality of products having a similar construction, each of the products having a size designation and an absorbency designation;

wherein each of the packages contains products having the same size designation and the same absorbency designation; and

wherein each of the packages has the same size designation and absorbency designation as the products it contains; and

wherein at least two of the packages in the product line have the same absorbency designation and different size designations.

Claims 43 and 45 each recite an absorbent product line comprising a plurality of absorbent products in which each of the products have "a size designation and an absorbency designation" and wherein either (1) "at least two of the packages in the product line have the same size designation and different absorbency designations" [claim 43] or (2) "at least two of the packages in the product line have the same absorbency designation and different size designations" [claim 45].

It is Appellant's position that Ronn et al. fail to teach or suggest at least these limitations in claims 43 and 45.

Put briefly, and as described in more detail previously, the merchandising system described in Ronn et al. correlates different sized articles with articles configured for different stages of development, in which the different stages of development are based upon the wearer's capability or level of activity. Neither size nor different stages of development have any necessary correlation to absorbency in the context of that system, such that the addition of absorbency designations would serve no useful purpose.

Accordingly, apart from Appellant's own disclosure, there is no teaching or suggestion modify Ronn et al. in the manner suggested by the Examiner to include absorbency designations and to correlate such absorbency designations with either the size or stage of development designations.

Therefore, and for all of the reasons explained in detail above, claims 43 and 45, and hence claim 44 which depends from claim 43, are patentable over Ronn et al., either alone or in combination with any other prior art of record.

Conclusions.

The merchandising system described in Ronn et al. correlates different sized articles with articles configured for different stages of development, in which the different stages of development are based upon the wearer's capability or level of activity. The Examiner concedes that Ronn et al. is silent regarding absorbency designations.

Ronn et al. fail to teach or suggest "absorbency designations" or "at least two absorbent product designations which are correlated to more than one size designation, or vice-versa. Moreover, the Examiner's argument shows that the rejection over Ronn et al. is ultimately based upon the erroneous assumption that "different sizes and particularly different stages of development [have] different levels of absorbency." This assumption is incorrect on both points, because neither size nor stage of development are necessarily linked to different levels of absorbency.

Size and absorbency characteristics are two different features of the absorbent article. As explained previously, these two features are not directly proportional to each other in every instance as implied by the Examiner. Likewise, stage of development and absorbency are also two different features of the absorbent article, and these two features are also not directly proportional to each other in every instance. Thus, nothing in Ronn et al. teaches or suggests providing absorbency designations or correlating the same with either size or stage of development designations.

Additionally, there is no "reasonable expectation of success" which would result from modifying Ronn et al. in the manner suggest by the Examiner in order to obtain the claimed invention. As explained previously, to modify Ronn et al. to include information about absorbency would seem to provide no useful result in the context of that reference. Instead, it would only seem to add unnecessary complexity, and may even make that system confusing, because there is no apparent relationship between absorbency and the other designations. Thus, Ronn et al. more likely teaches away from correlating absorbency designations to the size or stage of development designations.

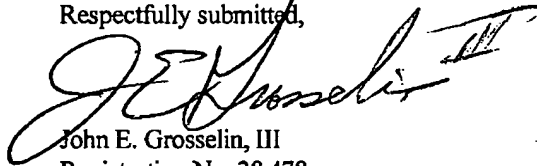
Therefore, and for all of the reasons set forth in more detail above, Appellant respectfully but forcefully contends that each claim is patentable over the prior art of record, and particularly Ronn et al. Therefore, reversal of all rejections is courteously solicited.

Attorney Docket No.: 28118

PATENT

Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 50-3790, and please credit any excess fees to such deposit account.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "J.E. Grosselin, III". The signature is fluid and cursive, with a large initial "J" and a stylized "E".

John E. Grosselin, III

Registration No. 38,478

Attorney for Appellant

Spilman Thomas & Battle, PLLC

C/O:

Michael G. Panian, Esq.

Vice President, Intellectual Property

Tyco Healthcare Retail Group, Inc.

701 Allendale Road

King of Prussia, PA 19406

Claims Appendix:

1. (original) A visual identification device for absorbent products, the device comprising:
 - two or more size designations;
 - two or more absorbency designations;
 - two or more absorbent product designations;
 - an association between each of the two or more absorbent product designations and a combination of one of the size designations and one of the absorbency designations, wherein the association identifies one or more absorbent product designations that are predicted to satisfy a user's fit and absorbency requirements; and
 - wherein the association identifies at least two absorbent product designations that correspond to one of the two or more size designations.
2. (original) The visual identification device according to claim 1, wherein the association identifies at least two absorbent product designations that correspond to one of the two or more absorbency designations.
3. (withdrawn) The visual identification device according to claim 1, wherein at least one of the two or more absorbent product designations comprises a name.
4. (withdrawn) The visual identification device according to claim 1, wherein at least one of the two or more absorbent product designations comprises a product shape.
5. (original) The visual identification device according to claim 1, wherein each of the absorbent product designations identifies a respective bladder control product.
6. (original) The visual identification device according to claim 1, wherein the device is selected from the group consisting of a chart, a graphical representation, a table and a list.
7. (withdrawn) The visual identification device according to claim 1, wherein at least one of the size designations, the absorbency designations, and the absorbent product designations comprises a textual description.
8. (original) The visual identification device according to claim 1, wherein at least one of the size designations, the absorbency designations, and the absorbent product designations comprises a graphical code.
(original)

9. The visual identification device according to claim 8, wherein the graphical code is selected from the group consisting of: words, letters, numbers, boxes, partitions, color codes, symbols, graphical points, bars, lines, and any combination thereof.
10. (original) The visual identification device according to claim 1, wherein at least a portion of the visual identification device is displayed on a medium selected from the group consisting of: packaging materials, in-store display materials, advertising materials, promotional materials, and any combination thereof.
11. (original) The visual identification device according to claim 1, wherein the visual identification device is displayed on a package for an absorbent article, the visual identification device further comprising:
- a content indicator associating one of the two or more absorbent product designations with the absorbent article.
12. (original) The visual identification device according to claim 1, further comprising a content indicator associated with one of the two or more absorbent product designations.
13. (original) An absorbent product line comprising the visual identification device of claim 1.
14. (original) A graphical representation for absorbent products, the graphical representation comprising:
- a chart having a size axis and an absorbency axis, the size axis corresponding to size designations, and the absorbency axis corresponding to absorbency designations;
 - two or more absorbent product designations located on the chart; and
 - an association between each of the two or more absorbent product designations and a combination of one of the size designations and one of the absorbency designations;
- wherein the association identifies one or more absorbent product designations that are predicted to satisfy a user's fit and absorbency requirements; and wherein the association identifies at least two absorbent product designations that correspond to one of the two or more size designations.
15. (original) The graphical representation according to claim 14, wherein the association identifies at least two absorbent product designations that correspond to one of the two or more absorbency designations.
16. (original) The graphical representation according to claim 14, wherein each of the absorbent product designations identifies a respective bladder control product.

17. (withdrawn) The graphical representation according to claim 14, wherein at least one of the size designation, the absorbency designation, and the absorbent product designation comprises a textual description.
18. (original) The graphical representation according to claim 14, wherein at least one of the size designation, the absorbency designation, and the absorbent product designation comprises a graphical code.
19. (original) The graphical representation according to claim 18, wherein the graphical code is selected from the group consisting of: words, letters, numbers, boxes, partitions, color codes, symbols, graphical points, bars, lines, and any combination thereof.
20. (original) The graphical representation according to claim 14, further comprising a content indicator associated with one of the two or more absorbent product designations.
21. (original) An absorbent product line comprising the graphical representation of claim 14.
22. (original) A method for marking an absorbent article package, the method comprising:
- marking two or more absorbent product designations;
 - marking two or more absorbency designations, wherein each absorbent product designation is associated with one or more absorbency designations;
 - marking two or more size designations, wherein each absorbent product designation is associated with one or more size designations, and at least one size designation is associated with two or more absorbent product designations associated with different absorbency designations.
23. (withdrawn) The method according to claim 22, wherein at least one of the two or more absorbent product designations comprises a name.
24. (withdrawn) The method according to claim 22, wherein at least one of the two or more absorbent product designations comprises a product shape.
25. (original) The method according to claim 22, wherein each of the two or more absorbent product designations identifies a respective bladder control product.
26. (withdrawn) The method according to claim 22, wherein at least one of the size designations, the absorbency designations, and the absorbent product designations comprises a textual description.

27. (original) The method according to claim 22, wherein at least one of the size designations, the absorbency designations, and the absorbent product designations comprises a graphical code.
28. (original) The method according to claim 27, wherein the graphical code is selected from the group consisting of: words, letters, numbers, boxes, partitions, color codes, symbols, graphical points, bars, lines, and any combination thereof.
29. (original) The method according to claim 22, further comprising:

marking a content indicator associated with one of the two or more absorbent product designations.
30. (original) A package for containing absorbent products comprising:

two or more size designations;

two or more absorbency designations;

two or more absorbent product designations;

an association between each of the two or more absorbent product designations and a combination of one of the size designations and one of the absorbency designations, wherein the association identifies one or more absorbent product designations that are predicted to satisfy a user's fit and absorbency requirements; and

wherein the association identifies at least two absorbent product designations that correspond to one of the two or more size designations.
31. (original) The package according to claim 30, further comprising a content indicator that associates one of the absorbent product designations with an absorbent product that is intended to be contained within the package.
32. (withdrawn) The package according to claim 30, wherein one of the two or more absorbent product designations comprises a name.
33. (withdrawn) The package according to claim 30, wherein one of the two or more absorbent product designations comprises a product shape.
34. (original) The package according to claim 30, wherein each of the absorbent product designations identifies a respective bladder control pad.
35. (original) The package according to claim 30, wherein the device is selected from the group consisting of: a chart, a graphical representation, a table, a list, and any combination thereof.

36. (withdrawn) The package according to claim 30, wherein at least one of the size designation, the absorbency designation, and the absorbent product designation comprises a textual description.

37. (original) The package according to claim 30, wherein at least one of the size designation, the absorbency designation, and the absorbent product designation comprises a graphical code.

38. (original) The package according to claim 37, wherein the graphical code is selected from the group consisting of words, letters, numbers, boxes, partitions, color codes, symbols, graphical points, bars, lines, or a combination thereof.

39. (original) An absorbent product line comprising the package of claim 30.

40. (original) An absorbent product line comprising:

two or more absorbent products, whereby each of the two or more absorbent products is characterized by a combination of an absorbency designation and a size designation, and

each of the two or more absorbent products are characterized by a different combination of absorbency designation and size designation, and

at least two of the two or more absorbent products are characterized by the same absorbency designation and different size designations.

41. (original) The absorbent product line according to claim 40, wherein at least two of the two or more absorbent products are characterized by the same size designation and different absorbency designations.

42. (previously amended) An absorbent product line comprising:

two or more absorbent products, whereby each of the two or more absorbent products is characterized by a combination of an absorbency designation and a size designation; and

each of the two or more absorbent products are characterized by a different combination of absorbency designation and size designation; and

at least two of the two or more absorbent products are characterized by the same size designation and different absorbency designations.

43. (original) An absorbent product line comprising:

a plurality of packages; and

a plurality of products having a similar construction, each of the products having a size designation and an absorbency designation;

wherein each of the packages contains products having the same size designation and the same absorbency designation; and

wherein each of the packages has the same size designation and absorbency designation as the products it contains; and

wherein at least two of the packages in the product line have the same size designation and different absorbency designations.

44. (original) An absorbent product line according to claim 43, wherein at least two of the packages in the product line have the same absorbency designation and different size designations.

45. (original) An absorbent product line comprising:

a plurality of packages; and

a plurality of products having a similar construction, each of the products having a size designation and an absorbency designation;

wherein each of the packages contains products having the same size designation and the same absorbency designation; and

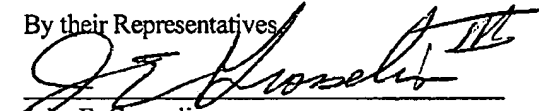
wherein each of the packages has the same size designation and absorbency designation as the products it contains; and

wherein at least two of the packages in the product line have the same absorbency designation and different size designations.

Authorization to charge the Deposit Account No. 50-3790 to an amount \$500.00 to cover the Large Entity Appeal Brief payment.

Date: March 16, 2007

By their Representatives


John E. Grosselin
Reg. No. 38,478

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Mail Stop Appeal Brief, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 16 day of March, 2007.

Deborah J. Peterson
Name


Signature

**This Page is Inserted by IFW Indexing and Scanning
Operations and is not part of the Official Record**

BEST AVAILABLE IMAGES

Defective images within this document are accurate representations of the original documents submitted by the applicant.

Defects in the images include but are not limited to the items checked:

- ☐ BLACK BORDERS
- ☐ IMAGE CUT OFF AT TOP, BOTTOM OR SIDES
- ☐ FADED TEXT OR DRAWING
- ☐ BLURRED OR ILLEGIBLE TEXT OR DRAWING
- ☐ SKEWED/SLANTED IMAGES
- ☐ COLOR OR BLACK AND WHITE PHOTOGRAPHS
- ☐ GRAY SCALE DOCUMENTS
- ☒ LINES OR MARKS ON ORIGINAL DOCUMENT
- ☐ REFERENCE(S) OR EXHIBIT(S) SUBMITTED ARE POOR QUALITY
- ☐ OTHER: _____

IMAGES ARE BEST AVAILABLE COPY.

As rescanning these documents will not correct the image problems checked, please do not report these problems to the IFW Image Problem Mailbox.